

1 **FEDERAL ELECTION COMMISSION**

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3 **FIRST GENERAL COUNSEL'S REPORT**

4 **Pre-MUR 604**

5 DATES SUBMITTED: May 5, 2017  
6 October 2, 2017  
7 (Supplement)

8 DATE ACTIVATED: November 14, 2017

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10 ELECTION CYCLES: 2008, 2010, 2012, 2014,  
11 2016

12 EXPIRATION OF STATUTE OF LIMITATIONS:

13 Earliest: November 1, 2012

14 Latest: October 27, 2022<sup>1</sup>

15 **SOURCE:**

*Sua Sponte* Submission

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17 **RESPONDENTS:**

18 Wine and Spirits Wholesalers of America, Inc.  
19 Wine and Spirits Wholesalers of America, Inc.  
20 Political Action Committee and Lisa Lisker in her  
official capacity as treasurer

21 **RELEVANT STATUTES AND  
22 REGULATIONS:**

23 52 U.S.C. § 30118(b)(4)(A)(i)  
24 11 C.F.R. § 114.1(c)(2)(i)

25 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

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27 **FEDERAL AGENCIES CHECKED:**

None

28 **I. INTRODUCTION**

29 The Wine and Spirits Wholesalers of America, Inc. ("WSWA") and Wine and Spirits  
30 Wholesalers of America, Inc. Political Action Committee ("WSWA PAC") (collectively  
31 "Respondents") submitted a *sua sponte* submission ("Submission") acknowledging that WSWA

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<sup>1</sup> Respondents agreed to toll the statute of limitations ("SOL") for a total of 300 days for activity that had not yet expired as of the date of the submission. As discussed below, the activity began in 2007.

1 impermissibly solicited certain unionized individuals for contributions to WSWA PAC.<sup>2</sup> For the  
2 reasons set out below, we recommend that the Commission: (1) open a MUR; (2) find reason to  
3 believe that Respondents violated 52 U.S.C. § 30118(b)(4)(A)(i); and (3) authorize pre-probable  
4 cause conciliation with the Committee and approve the attached conciliation agreement.

5 **II. FACTUAL AND LEGAL ANALYSIS**

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7 WSWA is an incorporated trade association that represents wholesalers of wine and  
8 spirits, with approximately 100 member companies, which are located in all 50 states and the  
9 District of Columbia.<sup>3</sup> WSWA PAC is the separate segregated fund (“SSF”) of WSWA, and it is  
10 registered with the Commission as a multi-candidate political committee.<sup>4</sup>

11 The Federal Election Campaign Act of 1971, as amended (the “Act”), permits  
12 corporations to establish SSFs.<sup>5</sup> The Act, however, prohibits a corporation or its SSF from  
13 soliciting contributions to the SSF from persons outside the corporation’s restricted class.<sup>6</sup> A  
14 corporation’s restricted class includes its executive and administrative personnel and families of  
15 such personnel.<sup>7</sup> A trade association and its SSF may solicit the stockholders and the executive  
16 and administrative personnel of a member corporation, provided that the member corporation  
17 separately and specifically approves the solicitation, and the member corporation does not

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<sup>2</sup> *Sua Sponte* Submission of WSWA and WSWA PAC (May 5, 2017) (“Submission”). *See also* Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) (“*Sua Sponte* Policy”).

<sup>3</sup> Submission at 2.

<sup>4</sup> *Id.* *See* Amended Statement of Organization (Feb. 24, 2016), available at <http://docquery.fec.gov/pdf/270/201602259009625270/201602259009625270.pdf>.

<sup>5</sup> *See* 52 U.S.C. §§ 30118(b)(2)(C), 30101(4)(B).

<sup>6</sup> 52 U.S.C. § 30118(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1).

<sup>7</sup> 11 C.F.R. § 114.1(j).

1 approve a solicitation by any other trade association during the calendar year.<sup>8</sup> Excluded from  
2 solicitable executive and administrative personnel, however, are professionals who are  
3 represented by a labor organization; therefore, these people are not part of a corporation's  
4 restricted class who may be solicited for contributions to a trade association's SSF.<sup>9</sup>

5 In the Submission, WSWA states that it inadvertently solicited a number of unionized  
6 executive or administrative employees at five member companies.<sup>10</sup> Respondents maintain that  
7 upon WSWA's January 2017 discovery of this activity,<sup>11</sup> they determined which executive or  
8 administrative personnel of the five companies were union members, ceased soliciting them for  
9 contributions to WSWA PAC, and refunded all of their contributions — totaling \$246,142.69 —  
10 made during the period from 2007 through 2016.<sup>12</sup> WSWA PAC's 2017 May Monthly Report  
11 discloses these refunds.<sup>13</sup> Some of the contributions, \$145,306.88, were made between 2012 and  
12 2016 and remain within the five-year statute of limitations ("SOL").<sup>14</sup> Respondents assert that to  
13 prevent similar impermissible solicitations from recurring in the future, "WSWA amended its

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<sup>8</sup> 52 U.S.C. § 30118(b)(4)(D); 11 C.F.R. § 114.8(c), (d). *See also* 11 C.F.R. § 114.8 (defining trade association).

<sup>9</sup> 11 C.F.R. § 114.1(c)(2)(i).

<sup>10</sup> Submission at 1.

<sup>11</sup> According to Respondents, they learned of these solicitations in January 2017 when WSWA was preparing to solicit eligible employees of a member company, and the company inquired about the permissibility of soliciting unionized employees. *Id.* at 4.

<sup>12</sup> *Id.* at 3-4. Supplemental *Sua Sponte* Submission of the Wine & Spirits Wholesalers of America, Inc. in Pre-MUR 604 ("Supplemental Submission") at 10 (Oct. 2, 2017).

<sup>13</sup> *See* WSWA PAC 2017 May Monthly Report at 211-322 (May 19, 2017), *available at* <http://docquery.fec.gov/pdf/006/201705199054037006/201705199054037006.pdf>.

<sup>14</sup> *See* Supplemental Submission at 10. The amount within the SOL in the Supplemental Submission was slightly revised from the figure in the original Submission. Respondents compare this amount with the overall \$5.2 million in contributions received by WSWA PAC during the 2012-2016 period. Submission at 2.

1 PAC solicitation materials to go beyond what the FEC's regulations require to specifically  
2 highlight the restriction on soliciting PAC contributions from union members."<sup>15</sup>

3 Respondents admit that they improperly solicited 473 unionized employees who  
4 contributed a total of \$246,142.69 to WSWA PAC.<sup>16</sup> Accordingly, we recommend that the  
5 Commission find reason to believe that Respondents violated 52 U.S.C. § 30118(b)(4)(A)(i).<sup>17</sup>

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<sup>15</sup> *Id.* at 2.

<sup>16</sup> *See* Supplemental Submission at 10.

<sup>17</sup> Respondents ask that in view of the unintentional nature of the impermissible solicitations, the refunds, and Respondents' lack of significant past violations of the Act, the Commission take no action and close this matter. Submission at 1. In the alternative, Respondents ask that the matter be referred to ADRO. *Id.* We believe the duration and scale of the activity warrant action by the Commission in the enforcement process. However, as discussed below, Respondents' cooperation is reflected in a substantially reduced proposed civil penalty.

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10 **IV. RECOMMENDATIONS**

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1. Open a MUR;
2. Find reason to believe that Wine and Spirits Wholesalers of America, Inc. and Wine and Spirits Wholesalers of America, Inc. Political Action Committee and Lisa Lisker in her official capacity as treasurer violated 52 U.S.C. § 30118(b)(4)(A)(i);
3. Enter into pre-probable cause conciliation Wine and Spirits Wholesalers of America, Inc. and Wine and Spirits Wholesalers of America, Inc. Political Action Committee and Lisa Lisker in her official capacity as treasurer, prior to a finding of probable cause;

- 1           4.     Approve the attached Factual and Legal Analysis;
- 2           5.     Approve the attached Conciliation Agreement; and
- 3           6.     Approve the appropriate letter.

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Lisa J. Stevenson  
Acting General Counsel

Kathleen M. Guith  
Associate General Counsel for Enforcement

Dated: 2.28.18

BY:   
Stephen Gura  
Deputy Associate General Counsel for  
Enforcement

  
Mark Allen  
Assistant General Counsel

  
Roy Q. Lockett  
Attorney

**FEDERAL ELECTION COMMISSION**

**FACTUAL AND LEGAL ANALYSIS**

**RESPONDENTS:** Wine and Spirits Wholesalers of America, Inc.      **MUR**  
Wine and Spirits Wholesalers of America, Inc.  
Political Action Committee and Lisa Lisker in her  
official capacity as treasurer

**I. INTRODUCTION**

The Wine and Spirits Wholesalers of America, Inc. (“WSWA”) and Wine and Spirits Wholesalers of America, Inc. Political Action Committee (“WSWA PAC”) (collectively “Respondents”) submitted a *sua sponte* submission (“Submission”) acknowledging that WSWA impermissibly solicited certain unionized individuals for contributions to WSWA PAC.<sup>1</sup> As set forth below, the Federal Election Commission (“Commission”) finds reason to believe that Respondents violated 52 U.S.C. § 30118(b)(4)(A)(i).

**II. FACTUAL BACKGROUND**

WSWA is an incorporated trade association that represents wholesalers of wine and spirits, with approximately 100 member companies, which are located in all 50 states and the District of Columbia.<sup>2</sup> WSWA PAC is the separate segregated fund (“SSF”) of WSWA, and it is registered with the Commission as a multi-candidate political committee.<sup>3</sup>

In the Submission, WSWA states that it inadvertently solicited a number of unionized personnel at five member companies.<sup>4</sup> Respondents maintain that upon WSWA’s January 2017

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<sup>1</sup> *Sua Sponte* Submission of WSWA and WSWA PAC (May 5, 2017) (“Submission”). See also Policy Regarding Self-Reporting of Campaign Finance Violations (*Sua Sponte* Submissions), 72 Fed. Reg. 16,695 (Apr. 5, 2007) (“*Sua Sponte* Policy”).

<sup>2</sup> Submission at 2.

<sup>3</sup> *Id.* See Amended Statement of Organization (Feb. 24, 2016), available at <http://docquery.fec.gov/pdf/270/201602259009625270/201602259009625270.pdf>.

<sup>4</sup> Submission at 1.

1 discovery of this activity,<sup>5</sup> they determined which solicited personnel of the five companies were  
2 union members, ceased soliciting them for contributions to WSWA PAC, and refunded all of  
3 their contributions — totaling \$246,142.69 —made during the period from 2007 through 2016.<sup>6</sup>  
4 WSWA PAC's 2017 May Monthly Report discloses these refunds.<sup>7</sup> Some of the contributions,  
5 \$145,306.88, were made between 2012 and 2016 and remain within the five-year statute of  
6 limitations ("SOL").<sup>8</sup> Respondents assert that to prevent similar impermissible solicitations from  
7 recurring in the future, "WSWA amended its PAC solicitation materials to go beyond what the  
8 FEC's regulations require to specifically highlight the restriction on soliciting PAC contributions  
9 from union members."<sup>9</sup>

### 10 III. LEGAL ANALYSIS

11 The Federal Election Campaign Act of 1971, as amended (the "Act"), permits  
12 corporations to establish SSFs.<sup>10</sup> The Act, however, prohibits a corporation or its SSF from  
13 soliciting contributions to the SSF from persons outside the corporation's restricted class.<sup>11</sup> A  
14 corporation's restricted class includes its executive and administrative personnel and families of  
15 such personnel.<sup>12</sup> A trade association and its SSF may solicit the stockholders and the executive

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<sup>5</sup> According to Respondents, they learned of these solicitations in January 2017 when WSWA was preparing to solicit eligible employees of a member company, and the company inquired about the permissibility of soliciting unionized employees. *Id.* at 4.

<sup>6</sup> *Id.* at 3-4. Supplemental *Sua Sponte* Submission of the Wine & Spirits Wholesalers of America, Inc. in Pre-MUR 604 ("Supplemental Submission") at 10 (Oct. 2, 2017).

<sup>7</sup> See WSWA PAC 2017 May Monthly Report at 211-322 (May 19, 2017), available at <http://docquery.fec.gov/pdf/006/201705199054037006/201705199054037006.pdf>.

<sup>8</sup> See Supplemental Submission at 10. The amount within the SOL in the Supplemental Submission was slightly revised from the figure in the original Submission. Respondents compare this amount with the overall \$5.2 million in contributions received by WSWA PAC during the 2012-2016 period. Submission at 2.

<sup>9</sup> *Id.* at 2.

<sup>10</sup> See 52 U.S.C. §§ 30118(b)(2)(C), 30101(4)(B).

<sup>11</sup> 52 U.S.C. § 30118(b)(4)(A)(i); 11 C.F.R. § 114.5(g)(1).

<sup>12</sup> 11 C.F.R. § 114.1(j).

1 and administrative personnel of a member corporation, provided that the member corporation  
2 separately and specifically approves the solicitation, and the member corporation does not  
3 approve a solicitation by any other trade association during the calendar year.<sup>13</sup> Excluded from  
4 solicitable executive and administrative personnel, however, are professionals who are  
5 represented by a labor organization; therefore, these people are not part of a corporation's  
6 restricted class who may be solicited for contributions to a trade association's SSF.<sup>14</sup>

7 Respondents admit that they improperly solicited 473 unionized employees outside the  
8 restricted classes of five member companies who contributed a total of \$246,142.69 to WSWA  
9 PAC.<sup>15</sup> Under these circumstances, the Commission finds reason to believe that Respondents  
10 violated 52 U.S.C. § 30118(b)(4)(A)(i).

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<sup>13</sup> 52 U.S.C. § 30118(b)(4)(D); 11 C.F.R. § 114.8(c), (d). *See also* 11 C.F.R. § 114.8 (defining trade association).

<sup>14</sup> 11 C.F.R. § 114.1(c)(2)(i).

<sup>15</sup> *See Supplemental Submission at 10.*